

# MORRISON & FOERSTER LLP

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## Privileged and Confidential Attorney-Client Communication

February 15, 2000

Writer's Direct Contact  
(415) 268-7008

*By U.S. Mail*

Ricky Gray, CDC #C-32622  
Pelican Bay State Prison  
Post Office Box 7500  
Crescent City, CA 95532-7500

Re: *Gray v. Deneau, et al.*, Docket No. C92-3621 SI (pr).

Dear Ricky:

I hope this letter finds you well. Enclosed is the final settlement agreement for the above-named case. I am awaiting final approval from defendants, but there most likely will not be any further changes. I will try to schedule a phone call with you to discuss the agreement after you receive it. Please read the agreement carefully, and DO NOT sign until I have had a chance to speak with you. Please pay particular attention to section 4, which discusses waiver of your rights under Section 1542 of the California Civil Code. Also, please note that Gary Sandor is not a party to this settlement agreement. As you will recall, the court found in favor of Sandor. Since Sandor is not included in the settlement agreement, none of the conditions of settlement (including releases, etc.) would apply to him. We can discuss any issues/ problems you may have with the agreement during our call.

You will also notice that defendants require 60 days from date of execution of the settlement agreement to issue your check. I asked opposing counsel to reduce that time, and he made several requests to the Attorney General's office that they shorten the time. Unfortunately, 60 days is the fastest the state can issue the check. I hope this is agreeable with you. As you certainly understand, bureaucracy can be quite slow.

Sincerely,



Mae S. Tai

Encl.

State of California

Department of Corrections

## Memorandum

Date : June 1, 2000

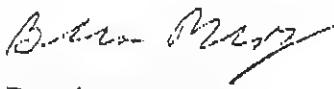
To : Deputy Attorney General  
 Scott Mather  
 Department of Justice  
 Attorney General's Office Los Angeles  
 300 South Spring Street  
 Los Angeles, CA 90013-1230

Subject: **NOTICE OF PAYMENT**  
**LEGAL LOG NO. 99-9644**  
**RICKY GRAY V. R DENEAU, ET AL.**  
**RICKY GRAY, C-32622**

The information below indicates the distribution of any monies paid by the California Department of Corrections in the settlement of the above captioned case.

Settlement Amount		Check Number	Check Date	Name of Payee
Restitution Monies Withheld	\$ 115,000.00			
Administrative Fees Withheld	\$ 500.00	057- 613254	06/01/00	SBQC
Balance Due Plaintiff	\$ 25.00	057- 613290	06/01/00	CDC
	\$ 114,475.00	057- 613291	06/01/00	Morrison & ...

A copy of this memorandum is being sent with a check made out to the plaintiff and/or plaintiff's counsel in accordance with the direction that we have been given. Any known restitution orders, fines and administrative fees have been deducted from this payment pursuant to Penal Code Section 2085.5.



Brendan Murphy  
 Board of Control Coordinator (A)  
 Headquarters Accounting Services Section

cc: Ricky Gray  
 Legal Affairs Division Attorney/Christine A. Roloff  
 Office of Victim Services and Restitution  
 Inmate Welfare Fund/Trust Accounting Section  
 Morrison & Foerster, in trust for Ricky Gray

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release dated March 2, 2000 is entered into by and among Ricky Gray ("Gray"), Randolph W. Deneau ("Deneau") and Michael L. Friedenfelt ("Friedenfelt," collectively with Deneau, the "defendants").

### RECITALS

WHEREAS, Gray filed an action captioned Ricky Gray v. R. Deneau, M. Friedenfelt, M. Freeman, and G. Sandor, Case No. C 92-3621 SI, United States District Court for the Northern District of California ("Suit"), in which he alleged the use of excessive force by defendants at Pelican Bay State Prison on July 13, 1992 ("July 13, 1992 incident");

WHEREAS, judgment was entered in favor of Gray and against Deneau, Friedenfelt and Monroe Freeman ("Freeman"), and in favor of Gary Sandor on October 14, 1999 ("October 14 judgment");

WHEREAS, defendants filed a Notice of Appeal from the October 14 judgment to the United States Court of Appeals for the Ninth Circuit on November 12, 1999 ("Appeal");

WHEREAS, Freeman passed away prior to execution of this Settlement Agreement and Release;

WHEREAS, without admitting fault or liability, the parties have reached a settlement of all their existing disputes, in the terms set forth in this Settlement Agreement and Release. In reaching this settlement, each of the parties has been represented by their own counsel, as follows: Gray by Morrison & Foerster, and Deneau and Friedenfelt by Edrington, Schirmer & Murphy.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Payment. Within sixty (60) business days of the day the California Department of Corrections ("CDC") receives this fully executed Settlement Agreement and Release, defendants will pay to Gray the sum of \$115,000.00 by check payable to "Morrison & Foerster, in trust for Ricky Gray," in full settlement of all claims arising out of the July 13, 1992 incident and all attorneys fees and costs. Interest shall be paid on said sum at the rate set forth in 28 U.S.C. Section 1961, beginning sixty-one (61) business days after the CDC receives the fully executed Settlement Agreement and Release. If full payment is not made to Gray on or before ninety (90) business days after the CDC receives the fully executed Settlement Agreement and Release, Gray shall be entitled to elect to void this Settlement Agreement and Release, and the parties shall return to the status quo ante.

2. Dismissals.

a. Defendants' Dismissals. Defendants shall dismiss their Appeal in its entirety with prejudice. To effectuate this dismissal, counsel for defendants shall file by March 15, 2000 either a motion or a stipulation to dismiss the Appeal with the Ninth Circuit Court of Appeals ("Request for Dismissal"), pursuant to Federal Rules of Appellate Procedure 42(b). Prior to filing the Request for Dismissal, counsel for the respective parties will have come to agreement on the text of the Request for Dismissal. Each party will bear its own costs and attorney's fees for the Appeal.

b. Gray's Dismissals. Gray shall dismiss any claims currently pending against defendants and Freeman relating to the July 13, 1992 incident. However, Gray shall be free to pursue any efforts, judicial or otherwise, to have the July 13, 1992 incident expunged from his prison record.

3. Releases.

a. Defendants' Releases. Effective upon the execution of this Settlement Agreement and Release, defendants fully and forever release Gray and his agents, assigns, attorneys, and representatives from any and all claims, demands, causes of action, liability, costs, attorney's fees or expenses, of any nature whatsoever, known or unknown, arising from the July 13, 1992 incident, the Suit, or the Appeal, which claims defendants now have or heretofore may have had against Gray; provided, however, that this release does not cover the obligations of Gray contained in this Settlement Agreement and Release.

b. Gray's Releases. Effective upon the execution of this Settlement Agreement and Release, Gray fully and forever releases defendants and Freeman and their agents, assigns, attorneys, and representatives from any and all claims, demands, causes of action, liability, costs, attorney's fees or expenses, of any nature whatsoever, known or unknown, arising from the July 13, 1992 incident, the Suit, or the Appeal, which claims Gray now has or heretofore may have had against defendants and Freeman; provided, however, that this release does not cover the obligations of defendants contained in this Settlement Agreement and Release. However, Gray shall be free to pursue any efforts, judicial or otherwise, to have the July 13, 1992 incident expunged from his prison record.

4. Civil Code Section 1542. The parties acknowledge that they are familiar with the provisions of California Civil Code Section 1542, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The parties agree that this Settlement Agreement and Release applies to all unknown and unanticipated claims, damages, and expenses, and they waive any rights that they might have under Section 1542 of the California Civil Code arising out of or relating to the July 13, 1992 incident.

5. Denial Of Liability. None of the parties hereto is conceding any liability or wrongdoing, and this Settlement Agreement and Release may not be construed as, or may not be used as an admission by Gray or the defendants of any fault, wrongdoing or liability whatsoever.

6. General Provisions.

a. If any dispute arises out of or concerning this Settlement Agreement and Release, including without limitation the preparation, execution, interpretation, implementation, performance and/or breach of said Settlement Agreement and Release, any action to resolve such dispute shall be filed in the Superior Court of California, City and County of San Francisco. The prevailing party in any such action shall be entitled to recover his, her, or its reasonable costs and attorneys fees incurred in such action.

b. This Settlement Agreement and Release contains the entire agreement and understanding between the parties concerning the subject matter of this settlement and supersedes and replaces all prior negotiations, proposed agreements and agreements, written or oral.

c. There have been no inducements or representations upon which this Settlement Agreement and Release have been entered into except as set forth in this Settlement Agreement and Release.

d. This Settlement Agreement and Release may be amended or modified only by a written instrument signed by all parties or their successors in interest.

e. This Settlement Agreement and Release shall be interpreted, enforced and governed by the laws of the State of California.

f. This Settlement Agreement and Release shall be construed as if the parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against any one party.

g. If any provision of this Settlement Agreement and Release shall be deemed unenforceable for any reason, the remaining provisions will be given full force and effect.

h. No inaccuracies in the Recitals on page 1 hereof concerning dates or the like shall in any way affect the validity and/or enforceability of this Settlement Agreement and Release.

i. This Settlement Agreement and Release may be executed in counterparts which when taken together constitute the entire agreement between the parties hereto.

j. The parties hereto acknowledge that they have been represented by counsel of their choice in concluding this settlement, and have had an opportunity to discuss this Settlement Agreement and Release with their respective counsel before executing them.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement and Release to be executed as of the day and year first above written.

Date: 3/21/2000

By: Ricky Gray  
Ricky Gray

Date: 3-23-2000

By: Randolph W. Deneau  
Randolph W. Deneau

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael L. Friedenfelt

APPROVED AS TO FORM:

MORRISON & FOERSTER LLP

Date: 3/15/00

By: Mae S. Tai  
Mae S. Tai  
Counsel for Ricky Gray

EDRINGTON, SCHIRMER & MURPHY

Date: 3/17/00

By: Michael P. Clark  
Michael P. Clark  
Counsel for Randolph W. Deneau and Michael  
L. Friedenfelt